

## Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 L-03 H-02 ARAE-00 SS-15 SSO-00 SP-02

EB-07 CIAE-00 INR-07 NSAE-00 INRE-00 ( ISO ) W

----- 028862

O 261557Z FEB 76

FM AMEMBASSY PORT AU PRINCE

TO SECSTATE WASHDC IMMEDIATE 1604

UNCLAS PORT AU PRINCE 0534

EO 11652 N/A

TAGS: EINV, HA

SUBJECT: TRANSLINEAR DISPUTE WITH GOH

REF: (A) STATE 041200, (B) PORT AU PRINCE 2864 AND PREVIOUS

1. AS DEPARTMENT AWARE, DURING COURSE OF PAST TWO YEARS CROOK AND CARDEN KEPT EMBASSY INFORMED OF SLOW-MOVING NEGOTIATIONS WITH GOH TOWARD A NEW CONTRACT FOR DEVELOPMENT TORTUGA ISLAND, AND EMBASSY OCCASIONALLY LENT GOOD OFFICES TO EXTENT OF EXPRESSING TO GOH OFFICIALS DESIRABILITY OF EXPEDITING CONCLUSION OF A VIABLE CONTRACT BETWEEN THE PARTIES BY MUTUAL AGREEMENT. TRANSLINEAR HAS BEEN OUT OF TOUCH WITH EMBASSY FOR ABOUT SIX MONTHS AND EMBASSY HAS NOT MADE FURTHER INFORMAL INQUIRES OF GOH ON STATUS OF NEGOTIATIONS IN ABSENCE OF REQUEST FROM COMPANY.

2. IN RESPONSE REF (A), AMBASSADOR DISCUSSED MATTER EVENING OF FEBRUARY 25 WITH HENRI BAYARD, HAITIAN UNDER SECRETARY OF COMMERCE AND INDUSTRY, WHO WAS GOH NEGOTIATOR ON CONTRACT UNTIL PRESIDEN DUVALIER'S COMMISSION ON PRIVATE INVESTMENT, SHORTLY BEFORE ITS DISSOLUTION IN JULY 1975, EXAMINED DRAFT CONTRACT AND FOUND IT UNACCEPTABLE BECAUSE CERTAIN PROVISIONS WERE CONSIDERED INCOMPATIBLE WITH HAITIAN SOVEREIGNTY. BAYARD GAVE FOLLOWING STATUS REPORT ON MATTER AS SEEN BY GOH.

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3. DEFECTS OF TRANSLINEAR CONTRACT. AS ILLUSTRATIVE

OF NEGOTIATION DIFFICULTIES ENCOUNTERED, BAYARD IDENTIFIED FOLLOWING THREE UNACCEPTABLE ELEMENTS OF PROPOSED TRANSLINEAR CONTRACT:

(A) PROVISION FOR PORT AUTHORITY TO ADMINISTER CONCESSION AREA. BECAUSE OF DEEP GOH DISILLUSIONMENT WITH THE WAY THIS ADMINISTRATIVE ARRANGEMENT HAD OPERATED UNDER CONTRACT WITH DUPONT CARIBBEAN (DCI), BAYARD SAID HE TOLD TRANSLINEAR THAT CONTRACT WOULD HAVE TO BE DRAWN BETWEEN TRANSLINEAR AND GOH DIRECTLY. A PORT AUTHORITY, HE SAID, WOULD BE ACCEPTABLE ONLY IF PROVIDED FOR GOH MAJORITY CONTROL. TRANSLINEAR, HE STATED, HAD REFUSED TO ACCEPT THIS.

(B) INTERNATIONAL AIRPORT ON TORTUGA. BAYARD STATED THAT FOR ANY FOREIGN ENTERPRISE TO CONTROL AN INTERNATIONAL AIRPORT, AS TRANSLINEAR PROPOSED TO DO ON TORTUGA, WOULD BE UNCONSTITUTIONAL. GOH COULD NEVER ABDICATE RIGHT TO CONTROL ENTRY AND CUSTOMS ON ANY PORTION OF HAITI'S TERRITORY, PARTICULARLY IN VIEW OF POTENTIAL DRUG SMUGGLING PROBLEM.

(C) MINERAL EXPLORATION. BAYARD STATED THAT CONTRACT AS PROPOSED BY TRANSLINEAR PROVIDED RIGHTS TO MINERAL EXPLORATION AND EXPLOITATION. HE SAID THIS WOULD HAVE CIRCUMVENTED PROCEDURES REQUIRED UNDER 1975 LAW ON MINING AND THUS WOULD AFFECT HIS RESPONSIBILITIES AS DIRECTOR OF MINING INSTITUTE. (FYI: BAYARD, IN THAT CAPACITY, IS ON POINT OF CONCLUDING NEGOTIATIONS WITH KENNECOTT FOR COPPER CONCESSION ON HAITIAN MAINLAND.)

4. RIGID TRANSLINEAR NEGOTIATING TACTICS. BAYARD SAID HE HAD EXCEEDED LIMITS OF HIS AUTHORITY IN EFFORT TO REACH AN AGREEMENT, BUT THAT CROOK HAD REFUSED TO DISCUSS GOH OBJECTIONS OR TO TAKE UP SERIOUSLY HIS SUGGESTION THAT AN ENTIRELY NEW CONTRACT BE DRAWN UP, ELIMINATING THE OBJECTIONABLE ELEMENTS THAT HAD BEEN CARRIED OVER FROM THE CANCELLED DCI CONTRACT. BAYARD SAID THAT CARDEN TOLD HIM HE DISAGREED WITH CROOK'S NEGOTIATING TACTICS. ACCORDING TO BAYARD, CROOK/CARDEN DIFFERENCES SEEMED UNCLASSIFIED

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TO REFLECT A DIVISION AMONG TRANSLINEAR STOCKHOLDERS, AND MADE IT ALL THE MORE DIFFICULT FOR GOH TO NEGOTIATE.

5. PRESENT GOH POSITION. BAYARD SAID THAT IN HIS PERSONAL JUDGMENT GOH WOULD STILL BE DISPOSED TO NEGOTIATE A CONTRACT WITH TRANSLINEAR FOR A FREEPORT AND TOURISM COMPLEX ON TORTUGA, AND WOULD BE PREPARED TO RESUME DISCUSSION TO THIS END AT ANY TIME. CONTRACT

WOULD HAVE TO START FROM DIFFERENT SET OF CRITERIA AND BE COMPATIBLE WITH HAITIAN SOVEREIGNTY AND LAW, INCLUDING THE 1975 LAW ON PROPERTY OWNED BY FOREIGNERS (SEE 75 PORT AU PRINCE A-118).

6. ALLEGED EXTORTION TTEMPT. BAYARD SAID HE HAD NO KNOWLEDGE OF ALLEGED EXTORTION ATTEMPT BEYOND WHAT CARDEN HAD TOLD HIM. HE HAD ASKED CARDEN TO GIVE HIM NAME OF PERSON INVOLVED, BUT CARDEN REFUSED. IN ABSENCE OF SPECIFICS, HE COULD NOT JUDGE WHETHER APPROACH WAS ANYTHING MORE THAN GAMBIT OF SOME KIND OF CONFIDENCE MAN ATTEMPTING TO EXTORT CASH ON OWN ACCOUNT FROM ANY SUSCEPTIBLE FOREIGN BUSINESSMAN KNOWN TO BE NEGOTIATING WITH GOH. BAYARD, INCIDENTALLY, HAS NO BROTHER (RE CROOK'S ALLEGATION ON SOURCE OF BRIBERY ATTEMPT, PARA 3, REF (A).)

7. CROOK'S JULY CABLE TO DUVALIER. BAYARD SAID THAT CROOK'S JULY 16 CABLE TO PRESIDENT DUVALIER WAS "TOTALLY IRREVERENT" (I.E. ITS TONE WAS ILL-ADVISED THREATENING) AND HE HAD SO INFORMED CARDEN. HE HAD FURTHER TOLD CARDEN THAT AFTER SUCH A CABLE HE COULD NOT DEAL WITH CROOK, AND HE HAD SOUGHT TO KEEP CARDEN IN PLAY AS TRANSLINEAR NEGOTIATOR.

8. WAS DECISION OF INVESTMENT COMMISSION COMMUNICATED TO TRANSLINEAR? (SEE REF (B).) BAYARD DID NOT KNOW WHETHER COMMISSION, BEFORE ITS DISSOLUTION, HAD COMMUNICATED WITH TRANSLINEAR, BUT SAID THAT TRANSLINEAR'S LOCAL LAWYER, JEAN-CLAUDE LEGER, COULD HAVE KEPT THE MATTER BEFORE THE GOH HAD HE BEEN INSTRUCTED TO DO SO. INSTEAD, SAID BAYARD, TRANSLINEAR HAD EVIDENTLY PREFERRED TO WITHDRAW FROM DIALOGUE.

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** NATIONALIZATION, DISPUTES, TOURISM, DIPLOMATIC DISCUSSIONS, NEGOTIATIONS, PROGRAMS (PROJECTS)  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 26 FEB 1976  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** n/a  
**Disposition Approved on Date:**  
**Disposition Authority:** n/a  
**Disposition Case Number:** n/a  
**Disposition Comment:**  
**Disposition Date:** 01 JAN 1960  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1976PORTA00534  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
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**Office:** ACTION ARA  
**Original Classification:** UNCLASSIFIED  
**Original Handling Restrictions:** n/a  
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**Original Previous Handling Restrictions:** n/a  
**Page Count:** 3  
**Previous Channel Indicators:** n/a  
**Previous Classification:** n/a  
**Previous Handling Restrictions:** n/a  
**Reference:** 76 STATE 41200, 76 PORT AU PRINCE 2864  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** castelsl  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 16 JUL 2004  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <16 JUL 2004 by schwenja>; APPROVED <01 SEP 2004 by castelsl>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
04 MAY 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** TRANSLINEAR DISPUTE WITH GOH  
**TAGS:** EINV, HA, US, TRANSLINEAR, (BAYARD, HENRI)  
**To:** STATE  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006